THE SUPREME COURT OF THE STATE

OF LOUISIANA

LYNN B. DEAN

VERSUS No. 82-C-1429

HONORABLE WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD

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Re: Lynn B. Dean, applying for Certiorari, or Writ of Review, to the Court of Appeal Fourth Circuit, Parish of St. Bernard, Number 12,933.

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July 2, 1982

Denied.

JAD
PFC
WFM
JLD
FAB
JCW
HTL

Supreme Court of Louisiana
July 2, 1982

/s/Frans LaBranche, Jr.
Clerk of Court
For the Court

ASSIGNMENT OF ERROR

The Court erred in finding that the rule of the St. Bernard Parish School Board prohibiting the sound recording of executive sessions by any member of the board does not violate the first amendment to the United States Constitution.

¶ NO. 12933

¶ COURT OF APPEAL
FOURTH CIRCUIT
¶ STATE OF LOUISIANA

LYNN B. DEAN ¶

VS. ¶

HONORABLE WILLIAM J. GUSTE, JR., ATTORNEY GENERAL, OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD

¶ ¶ ¶ ¶

AN APPEAL FROM A DECISION OF THE 34TH JUDICIAL DISTRICT COURT, PARISH OF ST. BERNARD, STATE OF LOUISIANA, HONORABLE RICHARD H. GAUTHIER, PRESIDING.

¶ ¶ ¶ ¶

ISRAEL M. AUGUSTINE, JR.

JUDGE

(Court composed of Judges Denis A. Barry, Israel M. Augustine, Jr., and David R.M. Williams)

JOHN F. ROWLEY, DISTRICT ATTORNEY; NUNZIO S. CUSIMANO, JR., ASSISTANT DISTRICT ATTORNEY; 34TH JUDICIAL DISTRICT COURT, PARISH OF ST. BERNARD Courthouse, Chalmette, Louisiana 70043
(Attorneys for Defendants-Appellees)

ROY A. RASPANTI, 3732 Canal Street; New Orleans, Louisiana 70119

AFFIRMED

MAY 11, 1982

The primary question which we are called upon to decide in this case is whether the rule of the St. Bernard Parish School Board prohibiting the sound recording of executive sessions by any member of the board violates the First Amendment to the United States Cosntitution.

Petitioner, Lynn B. Dean, is a member of the St. Bernard Parish School Board.

In February, 1981, the School Board, by a vote of 10 to 1, enacted a rule prohibiting the tape recordation of the proceedings of an executive session by any members of the board. Mr. Dean's was the only dissenting vote cast.

On March 11, 1981, when Mr. Dean attempted to tape record the proceedings of an executive session of the School Board, he was advised by the board that his actions were in violation of the rule of February, 1981.

to adopt reasonable rules and regulations for the conduct of its business. In this regard, La. R.S. 17:81 provides:

> "Each school board is authorized to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the State Board of Elementary and Secondary Education, as it may deem proper."

La. R.S. 17:6(10) allows the school boards of this State to adopt, amend or repeal rules, regulations and policies necessary or proper for the conduct of the business of the board.

Without addressing the constitutional issues raised by petitioner, the trial court found that the School Board's rule was not arbitrary or unreasonable in light of Louisiana's so-called Sunshine Law. Accordingly, it upheld the regulation under the authority of Estay v. Lafourche Parish School Board, 230 So.2d 443 (L. App. 1st Cir. 1969), which requires the courts of this State to up-

hold the rules and regulations adopted by school boards unless they are found to be arbitrary and unreasonable.

Petitioner now brings this appeal, urging the same grounds as before, but with apparent emphasis on the constitutionality of the School Board's regulation. We think that the constitutional issues raised by the facts of this case warrant our consideration.

Petitioner seeks to invalidate the regulation as prior restraint of speech, citing Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625; 75 L.Ed 1357 (1931). The importance of that category to Mr. Dean's position is that "any system of prior restraints come to this Court bearing a heavy presumption against its constitutional validity." Bantam Books, Inc., v. Sullivan, 372 U.S. 58, 70 (1968); New York Times v. United States, (Pentagon Papers Case), 403 U.S. 713, 714 (1971); Nebraska Press Association v. Stuart,

427 U.S. 539, 556-59 (1976).

THIRTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF ST. BERNARD
STATE OF LOUISIANA

NO. 38-990 Division "B"

LYNN B. DEAN

= Versus =

HONORABLE WILLIAM J. GUSTE, JR., ATTORNEY GENERAL, OF THE STATE OF LOUISIANA, HONORABLE JOHN F. ROWLEY, DISTRICT ATTORNEY FOR THE PARISH OF ST. BERNARD AND THE ST. BERNARD PARISH SCHOOL BOARD

J U D G M E N T

This cause came on for trial on Thursday, September 3, 1981.

PRESENT: ROY A. RASPANTI, Attorney for Lynn B. Dean
N.S. CUSIMANO, JR., Attorney for the St. Bernard Parish School Board

When after hearing the pleadings, evidence and argument of counsel, the Court took the matter under advisement.

The Court considering the law and the evidence to be in favor of defendant for reasons assigned in the written opinion of the Court this day delivered and filed:

IT IS ORDERED, ADJUDGED AND DECREED that there by judgment herein in favor of

defendant, ST. BERNARD PARISH SCHOOL BOARD, and against the petitioner, LYNN B. DEAN, dismissing his suit at his costs.

JUDGMENT READ, RENDERED AND SIGNED in Open Court at Chalmette, Louisiana, this 10th day of SEPTEMBER, 1981.

/s/ Richard H. Gauthier
J U D G E

whatever notes you make or whatever is in your mind, but, you better be right, don't be wrong.

THE COURT:

How does that offend the Constitution? What clause of the Constitution does that offend?

MR. RASPANTI:

The First Amendment, the right to free speech.

THE COURT:

How does that offend the right of free speech? Whose speech are you offending?

MR. RASPANTI:

I believe not only the right to speak, but, also addresses to the issue of the right to think and the right to take facts and put them in your memory. If you have a bad memory, like my client, you would have to write down or take notes on a typewriter, whatever,

which would take the time you can use to think, form thoughts before you express your views. That is how it's involved iwth the First Amendment. If you cannot think or get facts and garner them, you don't have a right to free speech. It depends on how good your membory is. It goes back to the same tokin that it would not only assist that one individual, it can assist the members against that individual if he falsely states that a violation of Article 42:6.1 has occured. The best evidence is the tape recorder. he can go to the public and say "Listen to the tape." So, it's to their benefit as well as the individual.

THE COURT:

I hate to keep interrupting you, but, you have not commented on what I

want. I want you to tell me under what authority can the Court interfere with the running of the school system when that school system has not

ROY A. RASPANTI
Attorney for
Lynn B. Dean
Petitioner
3732 Canal Street
New Orleans, Louisiana
70119
Tel: 504- 482-5701

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29 day of September 19 82 Served a copy of the foregoing pleading on all counsel of record by placing a copy of same in the U. S. Mail properly addressed and with sufficient postage.

Roy Raspanti
ROY RASPANTI